

after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

#### MODIFICATION OF GENERATION-SKIPPING TRANSFER TAX

Pub. L. 111-312, title III, §302(c), Dec. 17, 2010, 124 Stat. 3302, provided that: “In the case of any generation-skipping transfer made after December 31, 2009, and before January 1, 2011, the applicable rate determined under section 2641(a) of the Internal Revenue Code of 1986 shall be zero.”

### § 2642. Inclusion ratio

#### (a) Inclusion ratio defined

For purposes of this chapter—

##### (1) In general

Except as otherwise provided in this section, the inclusion ratio with respect to any property transferred in a generation-skipping transfer shall be the excess (if any) of 1 over—

(A) except as provided in subparagraph (B), the applicable fraction determined for the trust from which such transfer is made, or

(B) in the case of a direct skip, the applicable fraction determined for such skip.

##### (2) Applicable fraction

For purposes of paragraph (1), the applicable fraction is a fraction—

(A) the numerator of which is the amount of the GST exemption allocated to the trust (or in the case of a direct skip, allocated to the property transferred in such skip), and

(B) the denominator of which is—

(i) the value of the property transferred to the trust (or involved in the direct skip), reduced by

(ii) the sum of—

(I) any Federal estate tax or State death tax actually recovered from the trust attributable to such property, and

(II) any charitable deduction allowed under section 2055 or 2522 with respect to such property.

##### (3) Severing of trusts

###### (A) In general

If a trust is severed in a qualified severance, the trusts resulting from such severance shall be treated as separate trusts thereafter for purposes of this chapter.

###### (B) Qualified severance

For purposes of subparagraph (A)—

###### (i) In general

The term “qualified severance” means the division of a single trust and the creation (by any means available under the governing instrument or under local law) of two or more trusts if—

(I) the single trust was divided on a fractional basis, and

(II) the terms of the new trusts, in the aggregate, provide for the same succession of interests of beneficiaries as are provided in the original trust.

###### (ii) Trusts with inclusion ratio greater than zero

If a trust has an inclusion ratio of greater than zero and less than 1, a severance is

a qualified severance only if the single trust is divided into two trusts, one of which receives a fractional share of the total value of all trust assets equal to the applicable fraction of the single trust immediately before the severance. In such case, the trust receiving such fractional share shall have an inclusion ratio of zero and the other trust shall have an inclusion ratio of 1.

#### (iii) Regulations

The term “qualified severance” includes any other severance permitted under regulations prescribed by the Secretary.

#### (C) Timing and manner of severances

A severance pursuant to this paragraph may be made at any time. The Secretary shall prescribe by forms or regulations the manner in which the qualified severance shall be reported to the Secretary.

#### (b) Valuation rules, etc.

Except as provided in subsection (f)—

##### (1) Gifts for which gift tax return filed or deemed allocation made

If the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by section 6075(b) for such transfer or is deemed to be made under section 2632(b)(1) or (c)(1)—

(A) the value of such property for purposes of subsection (a) shall be its value as finally determined for purposes of chapter 12 (with- in the meaning of section 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and

(B) such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

##### (2) Transfers and allocations at or after death

###### (A) Transfers at death

If property is transferred as a result of the death of the transferor, the value of such property for purposes of subsection (a) shall be its value as finally determined for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned.

###### (B) Allocations to property transferred at death of transferor

Any allocation to property transferred as a result of the death of the transferor shall be effective on and after the date of the death of the transferor.

##### (3) Allocations to inter vivos transfers not made on timely filed gift tax return

If any allocation of the GST exemption to any property not transferred as a result of the death of the transferor is not made on a gift

tax return filed on or before the date prescribed by section 6075(b) and is not deemed to be made under section 2632(b)(1)—

(A) the value of such property for purposes of subsection (a) shall be determined as of the time such allocation is filed with the Secretary, and

(B) such allocation shall be effective on and after the date on which such allocation is filed with the Secretary.

**(4) QTIP trusts**

If the value of property is included in the estate of a spouse by virtue of section 2044, and if such spouse is treated as the transferor of such property under section 2652(a), the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 11 in the estate of such spouse.

**(c) Treatment of certain direct skips which are nontaxable gifts**

**(1) In general**

In the case of a direct skip which is a nontaxable gift, the inclusion ratio shall be zero.

**(2) Exception for certain transfers in trust**

Paragraph (1) shall not apply to any transfer to a trust for the benefit of an individual unless—

(A) during the life of such individual, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such individual, and

(B) if the trust does not terminate before the individual dies, the assets of such trust will be includible in the gross estate of such individual.

Rules similar to the rules of section 2652(c)(3) shall apply for purposes of subparagraph (A).

**(3) Nontaxable gift**

For purposes of this subsection, the term “nontaxable gift” means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of—

(A) section 2503(b) (taking into account the application of section 2513), or

(B) section 2503(e).

**(d) Special rules where more than 1 transfer made to trust**

**(1) In general**

If a transfer of property is made to a trust in existence before such transfer, the applicable fraction for such trust shall be recomputed as of the time of such transfer in the manner provided in paragraph (2).

**(2) Applicable fraction**

In the case of any such transfer, the recomputed applicable fraction is a fraction—

(A) the numerator of which is the sum of—

(i) the amount of the GST exemption allocated to property involved in such transfer, plus

(ii) the nontax portion of such trust immediately before such transfer, and

(B) the denominator of which is the sum of—

(i) the value of the property involved in such transfer reduced by the sum of—

(I) any Federal estate tax or State death tax actually recovered from the trust attributable to such property, and

(II) any charitable deduction allowed under section 2055 or 2522 with respect to such property, and

(ii) the value of all of the property in the trust (immediately before such transfer).

**(3) Nontax portion**

For purposes of paragraph (2), the term “nontax portion” means the product of—

(A) the value of all of the property in the trust, and

(B) the applicable fraction in effect for such trust.

**(4) Similar recomputation in case of certain late allocations**

If—

(A) any allocation of the GST exemption to property transferred to a trust is not made on a timely filed gift tax return required by section 6019, and

(B) there was a previous allocation with respect to property transferred to such trust,

the applicable fraction for such trust shall be recomputed as of the time of such allocation under rules similar to the rules of paragraph (2).

**(e) Special rules for charitable lead annuity trusts**

**(1) In general**

For purposes of determining the inclusion ratio for any charitable lead annuity trust, the applicable fraction shall be a fraction—

(A) the numerator of which is the adjusted GST exemption, and

(B) the denominator of which is the value of all of the property in such trust immediately after the termination of the charitable lead annuity.

**(2) Adjusted GST exemption**

For purposes of paragraph (1), the adjusted GST exemption is an amount equal to the GST exemption allocated to the trust increased by interest determined—

(A) at the interest rate used in determining the amount of the deduction under section 2055 or 2522 (as the case may be) for the charitable lead annuity, and

(B) for the actual period of the charitable lead annuity.

**(3) Definitions**

For purposes of this subsection—

**(A) Charitable lead annuity trust**

The term “charitable lead annuity trust” means any trust in which there is a charitable lead annuity.

**(B) Charitable lead annuity**

The term “charitable lead annuity” means any interest in the form of a guaranteed annuity with respect to which a deduction was allowed under section 2055 or 2522 (as the case may be).

**(4) Coordination with subsection (d)**

Under regulations, appropriate adjustments shall be made in the application of subsection

(d) to take into account the provisions of this subsection.

**(f) Special rules for certain inter vivos transfers**

Except as provided in regulations—

**(1) In general**

For purposes of determining the inclusion ratio, if—

(A) an individual makes an inter vivos transfer of property, and

(B) the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of section 2035),

any allocation of GST exemption to such property shall not be made before the close of the estate tax inclusion period (and the value of such property shall be determined under paragraph (2)). If such transfer is a direct skip, such skip shall be treated as occurring as of the close of the estate tax inclusion period.

**(2) Valuation**

In the case of any property to which paragraph (1) applies, the value of such property shall be—

(A) if such property is includible in the gross estate of the transferor (other than by reason of section 2035), its value for purposes of chapter 11, or

(B) if subparagraph (A) does not apply, its value as of the close of the estate tax inclusion period (or, if any allocation of GST exemption to such property is not made on a timely filed gift tax return for the calendar year in which such period ends, its value as of the time such allocation is filed with the Secretary).

**(3) Estate tax inclusion period**

For purposes of this subsection, the term “estate tax inclusion period” means any period after the transfer described in paragraph (1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died. Such period shall in no event extend beyond the earlier of—

(A) the date on which there is a generation-skipping transfer with respect to such property, or

(B) the date of the death of the transferor.

**(4) Treatment of spouse**

Except as provided in regulations, any reference in this subsection to an individual or transferor shall be treated as including a reference to the spouse of such individual or transferor.

**(5) Coordination with subsection (d)**

Under regulations, appropriate adjustments shall be made in the application of subsection (d) to take into account the provisions of this subsection.

**(g) Relief provisions**

**(1) Relief from late elections**

**(A) In general**

The Secretary shall by regulation prescribe such circumstances and procedures

under which extensions of time will be granted to make—

(i) an allocation of GST exemption described in paragraph (1) or (2) of subsection (b), and

(ii) an election under subsection (b)(3) or (c)(5) of section 2632.

Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

**(B) Basis for determinations**

In determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

**(2) Substantial compliance**

An allocation of GST exemption under section 2632 that demonstrates an intent to have the lowest possible inclusion ratio with respect to a transfer or a trust shall be deemed to be an allocation of so much of the transferor's unused GST exemption as produces the lowest possible inclusion ratio. In determining whether there has been substantial compliance, all relevant circumstances shall be taken into account, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2722; amended Pub. L. 100-647, title I, § 1014(g)(3)(A), (4), (17)(A), (B), (18), Nov. 10, 1988, 102 Stat. 3563, 3566, 3567; Pub. L. 101-239, title VII, § 7811(j)(4), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 101-508, title XI, §§ 11703(c)(1), (2), 11704(a)(17), (36), Nov. 5, 1990, 104 Stat. 1388-517, 1388-519; Pub. L. 107-16, title V, §§ 562(a), 563(a), (b), 564(a), June 7, 2001, 115 Stat. 89-91.)

AMENDMENTS

2001—Subsec. (a)(3). Pub. L. 107-16, § 562(a), added par. (3).

Subsec. (b)(1). Pub. L. 107-16, § 563(a), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: “If the allocation of the GST exemption to any property is made on a gift tax return filed on or before the date prescribed by section 6075(b) or is deemed to be made under section 2632(b)(1)—

“(A) the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 12, and

“(B) such allocation shall be effective on and after the date of such transfer.”

Subsec. (b)(2)(A). Pub. L. 107-16, § 563(b), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: “If property is transferred as a result of the death of the transferor, the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such prop-

erty shall be determined as of the time of the distribution concerned.”

Subsec. (g). Pub. L. 107-16, § 564(a), added subsec. (g). 1990—Subsec. (b)(3). Pub. L. 101-508, § 11704(a)(36), amended Pub. L. 100-647, § 1014(g)(4)(F)(ii). See 1988 Amendment note below.

Subsec. (c)(2). Pub. L. 101-508, § 11703(c)(2), inserted at end: “Rules similar to the rules of section 2652(c)(3) shall apply for purposes of subparagraph (A).”

Subsec. (c)(2)(B). Pub. L. 101-508, § 11703(c)(1), substituted “the trust does not terminate before the individual dies” for “such individual dies before the trust is terminated”.

Subsec. (d)(2)(B)(i)(I). Pub. L. 101-508, § 11704(a)(17), substituted “State” for “state”.

1989—Subsec. (b)(1), (3). Pub. L. 101-239 substituted “a gift tax return filed on or before the date prescribed by section 6075(b)” for “a timely filed gift tax return required by section 6019” in introductory provisions.

1988—Subsec. (a)(2). Pub. L. 100-647, § 1014(g)(4)(B), struck out at end “Except as provided in paragraphs (3) and (4) of subsection (b), the value determined under subparagraph (B)(i) shall be of the property as of the time of the transfer to the trust (or the direct skip).”

Subsec. (b). Pub. L. 100-647, § 1014(g)(4)(D), inserted “Except as provided in subsection (f)—” as introductory provision.

Subsec. (b)(2)(A). Pub. L. 100-647, § 1014(g)(4)(C), inserted before period at end “; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned.”

Subsec. (b)(2)(B). Pub. L. 100-647, § 1014(g)(4)(E), substituted “to property transferred at death” for “at or after death” in heading and “to property transferred as a result of the death of the transferor” for “at or after the death of the transferor” in text.

Subsec. (b)(3). Pub. L. 100-647, § 1014(g)(4)(F)(ii), as amended by Pub. L. 101-508, § 11704(a)(36), substituted “Allocations to inter vivos transfers” for “Inter vivos allocations” in heading.

Pub. L. 100-647, § 1014(g)(4)(F)(i), substituted “to any property not transferred as a result of the death of the transferor is” for “to any property is made during the life of the transferor but is”.

Subsec. (c). Pub. L. 100-647, § 1014(g)(17)(A), inserted “direct skips which are” in heading and amended text generally. Prior to amendment, text read as follows:

“(1) DIRECT SKIPS.—In the case of any direct skip which is a nontaxable gift, the inclusion ratio shall be zero.

“(2) TREATMENT OF NONTAXABLE GIFTS MADE TO TRUSTS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), any nontaxable gift which is not a direct skip and which is made to a trust shall not be taken into account under subsection (a)(2)(B).

“(B) DETERMINATION OF 1ST TRANSFER TO TRUST.—In the case of any nontaxable gift referred to in subparagraph (A) which is the 1st transfer to the trust, the inclusion ratio for such trust shall be zero.

“(3) NONTAXABLE GIFT.—For purposes of this section, the term ‘nontaxable gift’ means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of—

“(A) section 2503(b) (taking into account the application of section 2513), or

“(B) section 2503(e).”

Subsec. (d)(1). Pub. L. 100-647, § 1014(g)(17)(B), struck out “(other than a nontaxable gift)” after “transfer of property”.

Subsec. (d)(2)(B)(i). Pub. L. 100-647, § 1014(g)(18), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “the value of the property involved in such transfer, reduced by any charitable deduction allowed under section 2055 or 2522 with respect to such property, and”.

Subsec. (e). Pub. L. 100-647, § 1014(g)(3)(A), added subsec. (e).

Subsec. (f). Pub. L. 100-647, § 1014(g)(4)(A), added subsec. (f).

#### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-16, title V, § 562(b), June 7, 2001, 115 Stat. 90, provided that: “The amendment made by this section [amending this section] shall apply to severances after December 31, 2000.”

Pub. L. 107-16, title V, § 563(c), June 7, 2001, 115 Stat. 91, provided that: “The amendments made by this section [amending this section] shall apply to transfers subject to chapter 11 or 12 of the Internal Revenue Code of 1986 made after December 31, 2000.”

Pub. L. 107-16, title V, § 564(b), June 7, 2001, 115 Stat. 91, provided that:

“(1) RELIEF FROM LATE ELECTIONS.—Section 2642(g)(1) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to requests pending on, or filed after, December 31, 2000.

“(2) SUBSTANTIAL COMPLIANCE.—Section 2642(g)(2) of such Code (as so added) shall apply to transfers subject to chapter 11 or 12 of the Internal Revenue Code of 1986 made after December 31, 2000. No implication is intended with respect to the availability of relief from late elections or the application of a rule of substantial compliance on or before such date.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, § 11703(c)(4), Nov. 5, 1990, 104 Stat. 1388-517, provided that: “The amendments made by paragraphs (1) and (2) [amending this section] shall apply to transfers after March 31, 1988.”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, § 1014(g)(3)(B), Nov. 10, 1988, 102 Stat. 3563, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply for purposes of determining the inclusion ratio with respect to property transferred after October 13, 1987.”

Pub. L. 100-647, title I, § 1014(g)(17)(C), Nov. 10, 1988, 102 Stat. 3567, provided that: “The amendments made by this paragraph [amending this section] shall apply to transfers after March 31, 1988.”

Amendment by section 1014(g)(4), (18) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

### Subchapter F—Other Definitions and Special Rules

Sec.	
2651.	Generation assignment.
2652.	Other definitions.
2653.	Taxation of multiple skips.
2654.	Special rules.

#### § 2651. Generation assignment

##### (a) In general

For purposes of this chapter, the generation to which any person (other than the transferor) be-